

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA,	)	CASE NO. 8:06CR248
	)	
Plaintiff,	)	
	)	
vs.	)	<b>TENTATIVE FINDINGS</b>
	)	
JOSE ARTURO LARA-SOTELO,	)	
	)	
Defendant.	)	

The Court has received the Presentence Investigation Report ("PSR") and the parties' objections thereto (Filing Nos. 113, 114). The Court has also reviewed the Defendant's motion for downward departure and the supporting brief based on alleged overstatement of criminal history (Filing No. 123, 124). See "Order on Sentencing Schedule," ¶ 6. The Court advises the parties that these Tentative Findings are issued with the understanding that, pursuant to *United States v. Booker*, 2005 WL 50108 (U.S. Jan. 12, 2005), the sentencing guidelines are advisory.

The parties have both objected to the quantity of controlled substance attributable to the Defendant in ¶ 23 and the application of base offense level 34. The plea agreement recommends a base offense level of 32 based on a drug quantity of more than 500 but less than 1.5 kilograms of methamphetamine. The Court's tentative findings are that, absent unusual circumstances, the plea agreement should be upheld and the base offense level should be calculated as level 32.

The Defendant also objects to the criminal history computation in ¶ 23. However, ¶ 23 addresses drug quantity rather than criminal history. The Defendant did not timely object to the PSR as required by ¶ 4 of the Order of Sentencing Schedule. The Court is

unable to determine the nature of this objection, and the Court's tentative finding is that the objection is denied.

IT IS ORDERED:

1. The Court's tentative finding is that the government's objection (Filing No. 113) to the PSR is granted;
2. The Court's tentative findings are that the Defendant's objections (Filing No. 114) to the PSR granted in part and denied in part as follows:
  - a. the objection to ¶ 23 (drug quantity and base offense level) is granted as stated above;
  - b. the objection to ¶ 23 (criminal history calculation) is denied;
3. The Defendant's motion for downward departure (Filing No. 123) will be heard at sentencing.
4. The parties are notified that my tentative findings are that the PSR is correct in all other respects;
5. If **any** party wishes to challenge these tentative findings, the party shall file, as soon as possible but in any event before sentencing, and serve upon opposing counsel and the court a motion challenging these tentative findings, supported by (a) such evidentiary materials as are required (giving due regard to the requirements of the local rules of practice respecting the submission of evidentiary materials), (b) a brief as to the law, and (c) if an evidentiary hearing is requested, a statement describing why an evidentiary hearing is necessary and an estimated length of time for the hearing;
6. Absent submission of the information required by paragraph 3 of this order, my tentative findings may become final;

7. Unless otherwise ordered, any motion challenging these tentative findings shall be resolved at sentencing.

DATED this 12<sup>th</sup> day of March, 2007.

BY THE COURT:

s/Laurie Smith Camp  
United States District Judge